COURT NO.3

Criminal Appeal No. 1093 of 2001
(Old No. 3075/1984)

State ----------Appellant

Versus

Chandra Prakash and another----------Respondent

Hon'ble Irshad Hussain, J.)

This is a Government appeal against the judgment order dated 6.8.1984 passed by the then Asstt. Sessions Judge, Almora in Sessions Trial No. 48 of 1983. Accused person Chandra Prakash and Rakesh Goel who were sent up to stand trial, were held not guilty and acquitted of the charge under Section 307 IPC per said judgment.

2. Prosecution case as disclosed from written FIR, Ext. Ka.-1 was that at about 11:30 AM on 23.5.1982, Sri Afzal Hussain (PW-2) a student of LL.B, was standing near the cloth shop of his uncle Mohd. Umar (PW-1). Accused Chandra Prakash and Rakesh Goel who were also student of LLB in local degree collage, came there with an intention to commit murder of Afzal Hussain. They gave knife blows resulting which Afzal Hussain sustain injuries and fell on the ground. Mohd. Umar was given information of the incident whereupon he came there at the spot and took his nephew injured Afzal Hussain to the hospital for medical aid. The incident was seen by witnesses viz. Gopal Pandey, Gopal Singh, Abid Suhail, Chandan Singh (PW-4), Kundan Singh (PW-5) and Sarfraj Hussain (PW-7). According to the prosecution, these accused in morning of the incident have given a threat to assault the said victim.

3. Check FIR, Ext. Ka8 was registered at 13:40 the same day and investigation was taken up by Shri M. S. Khunnu, S.I. (PW-8). On completion of the investigation, charge-sheet Ext. Ka.5, was submitted against these accused on 29.6.1982.

4. Both the accused did not admit the accusations of the prosecution and contended that they have been falsely implicated due to enmity.

5. At the trial prosecution examined nine witnesses. Of these PW-1, Mohd. Umar was the informant and PW-2 Afzal Hussain was the injured. Other eye witnesses were PW-4, Chandan Singh; PW-5 Kundan Sigh and PW-7 Sarfaraj Hussain.

6. PW-4 and PW-5 did not support the prosecution version and were declared hostile. PW-6 Dr. R. D. Srivastava has medically examined Afzal Hussain and prepared injured report, Ex. Ka. 3. He detected two incised wounds on the body of the injured, and these injuries were stated to be fresh in view of the medical examination having been conducted at 11:45 A.M., the same day. One of the incised wound was simple and the another was kept under observation. These were, according to the Medical Officer, caused by some penetrating object. PW-3, M. M. Siddiqui, Advocate had handed over the blood stained clothes of the injured to the police which were attached, vide, Memo Ext. Ka.2. PW-8, S.I. M.S.Khunnu proved the steps taken towards the investigation of the crime and PW-9 Head Constable Nanda Ballabh proved check FIR and G.D. report of registration of the case.

7. Learned Asstt. Sessions Judge found the evidence of the prosecution insufficient to prove the charge against the accused and they were, therefore, held no guilty and acquitted of the charge. Aggrieved, the State preferred appeal against eh judgment of acquittal.

8. Heard Sri A. Rab learned A.G.A. and Shri Sudhir Kumar Gupta - Advocate for the respondents- accused and carefully considered the evidence, the circumstances and the probabilities of the case.

9. Learned A.G.A. vehemently submitted that although two eye witnesses - Chandan Singh (PW-4) and Kundan Singh (PW-5) turned hostile but there was reliable evidence of injured Afzal Hussain (PW-2) as

well as his real brother Sarfaraj Hussain (PW-7) to establish beyond doubt that none other than the two accused have assaulted the said victim at the time and place as claimed by the prosecution and that the learned Asstt. Sessions Judge failed to appraise the evidence of these witnesses in proper legal perspective. The defence has not disputed the time and place of the occurrence but disputed the identity of the assailants of the victim. Learned Sessions Judge on the basis of his appreciation of the evidence of eye-witness Sarfaraj Hussain (PW-7) recorded the conclusion that this witness has probably not seen the occurrence and gave the evidence in view of his close relationship with the victim Afzal Hussain. The conclusion drawn by the learned Sessions Judge does not appear to be unreasonable in view of the fact that this witness claimed to have seen the incident from the window of his house and even then did not raise any alarm. The FIR, Ext. Ka.-1 reveals that the injured Afzal Hussain was shifted to the hospital by Mohd. Umar (PW-1). If Sarfaraj Hussain was the witness of the incident and first to reach the spot he being the real brother of the inured would have shifted the injured to the hospital. According to the informant PW-1, he received information of the incident from Gopal Singh and then reached the scene of the incident to take the victim to the hospital. Therefore, his presence at the scene of the occurrence being highly doubtful the learned Sessions Judge rightly discarded his evidence.

10. In regard to the evidence of injured Afzal Hussain (PW-2), it need to be mentioned that he had no quarrel or dispute with the two accused prior to the occurrence. According to him, he was supporting one Mahesh Tamta in the Student Union Election for the post of Joint Secretary whereas the two accused were supporting rival candidate. According to him, he was summoned by these two accused from his shop and as soon as they reached near the shop of Bagh Singh at the place of the incident, both the accused gave him knife blows. Contraty to this version, he had told the Investiagion Officer under Section 161 of the Code of Criminal Procedure that the accused were setting in his shop before the incident. It does not stand to reason that if both the accused and injured were together, how the injured was summoned by the two accused for the shop to be taken near

the shop of one Bagh Singh. Further, he claimed that both the accused used to give him threats but he had not reported the matter to the police earlier. If he was at loggerheads with the two accused, there was no occasion for him with the accused soon before the incident and even his claimed that he summoned by the two accused from the shop becomes highly doubtful. The victim has, therefore, definitely suppressed the genesis of the occurrence and his evidence is not reliable to prove that the incident in fact took place in the manner as alleged by the prosecution. There were thus cogent reasons for the learned Asstt. Sessions Judge to draw inference that the evidence of the injured being highly shaky and discrepant no implicit reliance on his evidence could therefore be placed for proof of the incident as alleged by the prosecution. The view so taken cannot therefore be said to be unreasonable warranting any interference and taking of any contrary view in regard to the evidence of this witness. Learned Asstt. Sessions Judge also took note of the fact that two important witnesses of the incident, namely, Gopal Singh and Abid Hussain were not produced by the prosecution. Gopal Singh was the occupant of the shop of Bagh Singh where the incident is alleged to have taken place and Abid Hussain was named as the person who came to the rescue of the victim at the time of the assault. Learned Asstt. Sessions Judge was of the view that withholding of these witnesses and production of only relations of the injured casts a serious doubt on the prosecution story and makes it unreliable.

11. In the face of the facts of the case, the above observation also cannot be said to be unreasonable and in the totality of the circumstances of the case, the evidence of injured witness also being found unreliable, there was no evidence to bring home guilt to the two accused beyond reasonable doubt.

12. For the above reasons, this appeal has no force and is liable to be dismissed. Appeal is accordingly dismissed. Material Ext.1 to 3 shall be retained by the injured.

(Irshad Hussain, J.)

Dated 26.9.2003
Rawat